

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nigeria Lee Harvey,

Case No. 21-cv-0346 (WMW/JFD)

Plaintiff,

ORDER

v.

Minnesota Department of Correction et al.,

Defendants.

Before the Court is a limited remand from the United States Court of Appeals for the Eighth Circuit for calculation of the initial appellate filing fee that Plaintiff Nigeria Lee Harvey owes in this lawsuit. (Dkt. 96.) Harvey has not submitted financial documentation from his prison trust account establishing the average deposits to and balance of the account during the six months preceding the filing of the appeal. *See* 28 U.S.C. § 1915(b)(1). The Court, therefore, provisionally assesses an initial appellate filing fee of \$35.00, consistent with *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997) (per curiam). That amount is due and payable immediately. If Harvey submits a certified copy of his prison trust account statement within 30 days after the date of this Order, the Court will recalculate the initial appellate filing fee that Harvey owes.

Harvey also moves for leave to use the record from this Court on appeal before the Eighth Circuit. (Dkt. 92.) Although filed on this Court's docket, the motion is addressed to the Eighth Circuit and makes a request that only the Eighth Circuit can grant. Accordingly, this motion is transferred to the Eighth Circuit for consideration.

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. Plaintiff Nigeria Lee Harvey is provisionally assessed an initial appellate filing fee of \$35.00, which is due and payable immediately.

2. Plaintiff Nigeria Lee Harvey may submit a certified copy of his prison trust account statement within 30 days after the date of this Order, in which case the initial partial filing fee owed in this matter will be recalculated based on the information provided in that statement.

3. Plaintiff Nigeria Lee Harvey's motion for leave to use the original record, (Dkt. 92), is **TRANSFERRED** to the United States Court of Appeals for the Eighth Circuit.

Dated: March 17, 2022

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge